

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 30, 2008

TOMMY LEE NORWOOD V. STATE OF TENNESSEE

Appeal from the Criminal Court for Hamilton County
No. 264536 Barry A. Steelman, Judge

No. E2007-01871-CCA-R3-HC - Filed May 5, 2008

The pro se petitioner, Tommy Lee Norwood, appeals as of right the Hamilton County Criminal Court's summary dismissal of his petition for a writ of habeas corpus. The petition alleges that he is being illegally restrained by federal sentences enhanced as a collateral consequence of his state convictions that are based upon the ineffective assistance of counsel, involuntary guilty pleas and other defects in prosecution. The habeas court summarily dismissed the petition based upon its finding that the petition failed to allege a present restraint on the petitioner relevant to the judgments under attack. Following our review, we affirm the judgment of the habeas court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

Tommy Lee Norwood, Edgefield, South Carolina, Pro Se.

Robert E. Cooper, Jr., Attorney General & Reporter; Leslie E. Price, Assistant Attorney General; William B. Cox, District Attorney General, attorneys for appellee, State of Tennessee.

OPINION

The record reflects that the petitioner is challenging the following convictions that occurred in the Hamilton County Criminal Court:

Case Number	Offense(s)	Sentence	Date of Judgment
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138197	not included in record	not included in record	not included in record ¹
139956	Burglary of Business	three years	September 28, 1979
139957	Burglary of Business	three years	September 28, 1979
176429	Burglary (3d degree)	three years	May 30, 1989
199845	Robbery	eleven years	February 24, 1995

The petition alleges that the petitioner is actually innocent of the charge in case numbers 139956 and 139957. The petition alleges that the petitioner's guilty pleas were not entered into knowingly and voluntarily in case numbers 138197, 139956, 139957, and 176429. The petition also alleges that the petitioner was denied his right to the effective assistance of counsel in all of the cases and that fatal defects in the grand jury and petit jury selection process occurred with respect to case number 199845. In support of his claim for relief, the petitioner argues that the enhancement of his federal sentences based upon the prior state convictions is a collateral consequence for which he is entitled to habeas corpus relief.

ANALYSIS

Tennessee law provides that “[a]ny person imprisoned or restrained of his liberty under any pretense whatsoever . . . may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment.” Tenn. Code Ann. § 29-21-101. Habeas corpus relief is limited and available only when it appears on the face of the judgment or the record of proceedings below that a trial court was without jurisdiction to convict the petitioner or that the petitioner's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). To prevail on a petition for a writ of habeas corpus, a petitioner must establish by a preponderance of the evidence that a judgment is void or that a term of imprisonment has expired. See State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). If a petition fails to state a cognizable claim, it may be dismissed summarily by the trial court without further inquiry. See State ex rel. Byrd v. Bomar, 214 Tenn. 476, 483, 381 S.W.2d 280, 283 (1964); Tenn. Code Ann. § 29-21-109. We note that the determination of whether to grant habeas corpus relief is a matter of law; therefore, we will review the habeas corpus court's finding de novo without a presumption of correctness. McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001).

As correctly stated by the habeas court in its order summarily dismissing the petition, we reiterate that “the only ground for issuance of the writ of habeas corpus is an imprisonment or restraint on liberty that derives from a judgment that is void or a sentence that has expired.” The petitioner's allegations as they relate to the prior convictions, even if true, would not render those

¹ The petition also includes allegations related to case number 138197. However, the record does not contain a judgment for that case number. From the habeas corpus court's order we can discern that the judgment arose from a guilty plea and resulted in a sentence of three years.

judgments void. Furthermore, our supreme court has held that the enhancement of a sentence based upon a prior conviction does not constitute a restraint on liberty within the meaning of the habeas corpus statute, and that such enhancement “is merely a collateral consequence” of the prior convictions. Hickman v. State, 153 S.W.3d 16, 24 (Tenn. 2004). Therefore, we conclude that the habeas court correctly dismissed the petition for a writ of habeas corpus.

CONCLUSION

Based upon the foregoing, we conclude that the summary dismissal of the petition for a writ of habeas corpus was proper. The judgment of the habeas court is affirmed.

D. KELLY THOMAS, JR., JUDGE